

IN THE CIRCUIT COURT OF COOK COUNTY
CHANCERY DIVISION

Judge Jean Prendergast Rooney

AUG 29 2014

Circuit Court - 20144

Garry McCarthy, Superintendent of
City of Chicago Police Department,
Plaintiff,

v.

Carl Belaschky and the Police Board
of the City of Chicago,
Defendants.

Case No. 14-CH-1708

Calendar 8

Judge Jean Prendergast Rooney

MEMORANDUM OPINION AND ORDER

This case is before the court on plaintiff, Superintendent of the Chicago Police, Garry McCarthy (“McCarthy”) complaint for administrative review of a decision by defendant City of Chicago Police Board (“Board”). After the administrative hearing, the Board found that defendant Officer Carl Belaschky (“Belaschky”) committed perjury and was guilty of violating several police department rules. The Board rejected McCarthy’s recommendation to discharge Belaschky from the Chicago Police Department (“CPD”), instead imposing a one-year suspension. McCarthy argues that the Board’s decision is arbitrary, and asks this court to reverse and remand the decision to the Board. For the following reasons, this court affirms the Board’s decision.

THE BOARD’S DECISION

On October 4, 2013 the Board held a hearing on McCarthy’s charges, including Case No. 13-PB-2834, against Belaschky. At that hearing, the Board found that Belaschky violated CPD Rule 14, but decided that a one-year suspension was the appropriate remedy considering the facts and circumstances of the case. The Board made the following findings of fact in that case, based on the testimony of Belaschky, the testimony of CPD Sergeant William Kaupert, and on McCarthy’s allegations.

Colorado police confiscated Belaschky’s driver’s license on October 21, 2010, during a DUI-related arrest in Colorado. (R. at 51-53.) The State of Colorado suspended Belaschky’s driving privilege as a result of this arrest, because he refused to submit to a breathalyzer test. (R. at 52, 57.) Belaschky promptly reported his DUI-related arrest to his commanding officer, Sergeant William Kaupert, as required by CPD protocol. (R. at 59, 77.) Belaschky testified that he applied for a duplicate driver’s license on December 28, 2010, on the advice of his attorney,

Melinda Brennan, and in response to a direct order from his superior officer, Lieutenant Barbara West. (R. at 53.)

In responding to certain required questions on this application, Belaschky knowingly made several false statements. Specifically, he represented that: (1) he requested a duplicate license because the original was lost; (2) his license or privilege to drive was not suspended or revoked in any other state or jurisdiction at the time; and (3) his license was not being held by a court in lieu of bail. (R. at 54-55; Ex. A "Charges.") A Secretary of State employee wrote down these answers and Belaschky signed the application under penalty of perjury. (R. at 55.)

McCarthy recommended that Belaschky be discharged for making false statements under oath, as a violation of CPD Rule 14. (R. at 1-2; Ex. A "Charges.") That rule forbids "making a false report, written or oral." (R. at 2; Ex. A "Charges.")

By unanimous vote, the Board found that Belaschky was guilty of all charges, including a Rule 14 violation. (R. at 11.) However, the Board rejected McCarthy's recommendation to discharge Belaschky. The Board imposed a one-year suspension as a combined punishment for the charges against him. (R. at 12.) The Board stated that it "considered the facts and circumstances of [Belaschky's] conduct, the evidence presented in defense and mitigation, and the Respondent's complimentary and disciplinary histories." (R. at 9.) The record reflects that Belaschky received 28 awards and commendations but not a single complaint during his 17 years as an officer with the Chicago Police Department. (R. at 15-16; Borad's Answer, Ex. A.)

The Board found that suspension was more appropriate than dismissal in this case because "the seriousness of [Belaschky's] misconduct on December 28, 2010, is mitigated by several factors," including the following: (1) Belaschky "promptly reported his DUI arrest to his supervisor"; (2) "Belaschky was ordered to go to the Secretary of State's office to obtain a license by his supervisor"; (3) he did not "falsify[the application] in order to obtain a material advantage as against the City"; and (4) "the substance of the falsehoods by the officer here did not directly relate to his public duties as a police officer, nor did the falsehoods result from official police business." (R. at 10.) In support of the last factor above, the Board referenced *Harder v. Village of Forest Park*, 2008 U.S. Dist. LEXIS 36892: an unreported federal district court case from the Northern District of Illinois. For those reasons, the Board found that a one-year suspension was a fitting punishment on the facts of the case. (R. at 10.)

McCarthy now seeks administrative review solely on the issue of whether the Board's decision is arbitrary in imposing only suspension, rather than discharge Belaschky. (Compl. ¶ 10.)

STANDARD OF REVIEW

This case appears before this court in a unique procedural posture. The parties could not cite, and this court could not find, a case in which the police superintendent sought reversal of the board's decision to suspend, rather than discharge, a CPD employee. However, the parties agree that the applicable standard of review in this case is the standard for administrative review of a Police Board's decision concerning dismissal of an employee. *See* P's Brief p. 15; D's Resp. p. 5.

This standard requires a two-step analysis, determining the following: (1) whether the Board's factual findings are contrary to the manifest weight of the evidence, and (2) whether those findings constitute a sufficient basis for the agency's conclusions regarding cause for termination. *Rodriguez v. Weis*, 408 Ill. App. 3d 663, 668 (1st Dist. 2011); *Siwek v. Police Bd.*, 374 Ill. App. 3d 735, 737-738 (1st Dist. 2007). The court considers the Board's findings of fact as *prima facie* true and correct. 735 ILCS 5/3-110; *Abrahamson v. Ill. Dep't of Prof. Reg.*, 61 Ill. 2d 76, 88 (1992). The Board's finding regarding the penalty should be overturned only if it is "arbitrary and unreasonable or unrelated to the requirements of the service." *Launius v. Bd. of Fire & Police Comm'r's*, 151 Ill. 2d 419, 435 (1992).

ANALYSIS

The parties agree that Belaschky committed perjury and thus violated CPD Rule 14. Thus, this court must examine only whether the Board demonstrated a reasonable rationale for its decision to impose a one-year suspension, or whether that decision is arbitrary and unreasonable.

An administrative agency's decision regarding dismissal is arbitrary when it "(1) relies on factors which the legislature did not intend for the agency to consider; (2) entirely fails to consider an important aspect of the problem; or (3) offers an explanation for its decision which runs counter to the evidence before the agency, or which is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Ill. Council of Police v. Ill. Labor Rels. Bd.*, 404 Ill. App. 3d 589, 596 (1st Dist. 2010) (citing *Greer v. Illinois Housing Dev. Authority*, 122 Ill.2d 462, 505-506 (1988)). A decision is often considered arbitrary when it constitutes a sudden and unexplained change in policy or practice. *Greer*, 122, Ill.2d at 506; *Id.* at 596 ("When an agency drastically departs from past practices, its decisions are entitled to less deference.")

McCarthy argues that the Board's decision in the present case is arbitrary because it is an unexplained departure from an established policy of discharging all officers found guilty of Rule 14 violations. In support of this policy, McCarthy cites

Rodriguez, which held that “a public finding that an officer had lied on previous occasions may be a serious liability to the department because it irreparably harms an officer’s credibility.” *Rodriguez*, 408 Ill. App. 3d at 671.

Belaschky counters that there is no “iron-clad policy” of discharging officers found guilty of Rule 14 violations. Belaschky heavily relies on the case of *In re Terrazas*, where the board only suspended four officers found guilty of Rule 14 violations. 12-PB-2802-2808. In addition to *In re Terrazas*, Belaschky cites to other cases where the Board found officers guilty of Rule 14 violations yet only suspended the offenders. *In re Vanourek*, 13-PB-2835 (60-day suspension); *In re Swarbrick*, 13-PB-2836 (60-day suspension); *In re Novalez*, 11-SR-3216 (seeking 10 day suspension, but found not guilty). Belaschky also argues that the Board’s decision is not arbitrary because it cites several “mitigating factors” justifying its decision to suspend rather than discharge Belaschky. (R. at 10.)

McCarthy attempts to distinguish *Vanourek*, *Swarbrick* and *Novalez* by arguing that they were Independent Police Review Authority (“IPRA”) cases. Because IPRA filed those cases, the Superintendent had no involvement and no control over the punishment sought. That distinction is, however, irrelevant to the instant case, because McCarthy argues that the *Board* has a policy regarding Rule 14 violations. It is undisputed that the Board has authority to determine the appropriate punishment in cases brought by the IPRA. McCarthy thus has not shown a policy of dismissing officers in every case involving a Rule 14 violation.

This court acknowledges, pursuant to the principle of judicial notice, that other Board decisions exist that are relevant to this court’s analysis. The other Board decisions belie McCarthy’s argument that the Board maintained a policy mandating discharge in cases of Rule 14 violations. McCarthy’s cited cases merely demonstrate that the Board previously discharged officers found guilty of similar misconduct in violation of Rule 14. The fact that different individuals have been disciplined differently for similar misconduct does not support the conclusion that the agency’s disciplinary decision is arbitrary. *Rodriguez*, 408 Ill. App. 3d at 668. An agency is not bound by its prior decisions or practices forever and “may adjust its standards and policies in light of experience, so long as the adjustments are not arbitrary or capricious.” *Ill. Council of Police*, 404 Ill. App. 3d at 596. Absent a finding that the Board’s decision is arbitrary, this court will not reverse the decision, because the Board is in the best position to determine the effect of an officer’s conduct on the department. Its decision is entitled to “considerable deference” by this court. *Rodriguez*, 408 Ill. App. 3d at 671.

Additionally, the Board is entitled to examine the facts and circumstances of the defendant’s service career in deciding an appropriate punishment for a CPD rule violation. The record contains ample evidence to support the Board’s decision to forego discharge as a punishment here. For example, Sergeant Kaupert provided

lengthy character testimony, (R. at 73-75), Belaschky served without incident for 17 years, he received numerous commendations and awards, and he had no prior disciplinary history during his 17 years of service. (R. at 15-16, Ex. A.)

McCarthy next argues that the Board's decision is arbitrary because it relies on *Harder v. Village of Forest Park*. 2008 U.S. Dist. LEXIS 36892. The Board cites this case for its conclusion that false statements do not warrant dismissal if they do not relate to the officer's public duties or result from official police business. (R. at 10.) This court admittedly views *Harder* with a critical eye, noting that it appears to be an inaccurate statement of current Illinois law. 2008 U.S. Dist. LEXIS 36892. However, the record demonstrates that the *Harder* is not the sole basis for the Board's decision in this case. *Id.* Thus, even if the Board relied on *Harder* in error, there are enough other factors in this record to support the Board's ultimate punishment of suspension. McCarthy seeks imposition of a harsher penalty than that imposed by the Board, but this court cannot appropriately find under the agreed-upon standard of review that the Board's decision is arbitrary and unreasonable. *Launius*, 151 Ill.2d at 435 (1992).

In sum, the Board's decision is neither arbitrary nor unexplained. The Board's written decision references several reasons justifying Belaschky's one-year suspension as an appropriate punishment. The uncontested evidence in the record sufficiently supports the Board's findings. There is no established policy of discharging police officers who violate Rule 14 or make false statements under oath. Therefore, the Board's decision not to discharge Belaschky is not an arbitrary or unexplained departure from any prior policy. McCarthy's petition for administrative review is denied, and the Board's decision to suspend Belaschky for one-year for his misconduct is affirmed.

WHEREFORE, for the foregoing reasons, IT IS HEREBY ORDERED that:

- (1) Garry McCarthy's petition for administrative review is denied.
- (2) The City of Chicago Police Board's decision, *In re: Carl Belaschky*, Case No. 13-PB-2834, is affirmed.
- (3) Officer Carl Belaschky's one-year suspension from July 24, 2013 to July 23, 2014 has already been completed.

ENTERED: August 29, 2014

Judge Jean Prendergast Rooney

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Circuit Court - 2044

JUDGE JEAN PRENDERGAST ROONEY